Mook Meng Sun v Lo Aa Kau & Ors

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO 24–995 OF 1990
ABDUL AZIZ J
25 JANUARY 2002

Land Law *— Restraints on dealings — Prohibitory order — Registration of transfer — Whether registration of transfer took place before prohibitory order lapsed — Whether instrument of transfer rendered insufficient or void due to registration of instrument despite existence of prohibitory order*

The plaintiff had obtained judgment against the first and second defendants for a certain sum of money. In order to execute the judgment by seizure and sale of a piece of land owned by the first and second defendants, the plaintiff obtained a prohibitory order under O 30 r 13(1) of the Subordinate Courts Rules 1980. The prohibitory order was made on 28 July 1989 and pursuant to the order, the first and second defendants were prohibited from effecting any dealing in respect of the land. Under s 338(1) of the National Land Code 1965 ('the NLC'), the prohibitory order was to lapse at the expiry of six months from 28 July 1989. On 30 January 1990 there was registered, on the register document of title to the land, an instrument of transfer by which the first and second defendants transferred the land to the third defendant. This was an application by the plaintiff for a declaration that the transfer of the land by the first and second defendants to the third defendant was void under s 336 of the NLC and a consequential order that all memorials of the transfer be cancelled by the land administrator. According to the plaintiff, 27 January 1999 was the last day on which the prohibitory order was in force but that day was a public holiday, being the first day of Chinese New Year. 28 January 1990 was a Sunday and 29 January 1990 was a public holiday, being a substitute holiday for the second day of Chinese New Year, which fell on the Sunday of 28 January 1990. As such, the plaintiff maintained that the last day of the period of six months was 30 January 1990 and the prohibitory order, therefore, lapsed only on 31 January 1990.

Held, dismissing the plaintiff's application:

(1) According to s 338(1) of the NLC, a prohibitory order shall 'lapse at the expiry of six months from the date on which it was made'. The six-month period would lapse upon the passing of the last day, that is, on the day after the last day. Therefore, the question to be determined was what the last day of the period of six months was in the instant case. The interpretation statute applicable to the NLC was s 36(b) of the Interpretation and General Clauses Ordinance 1948, now s 105(b) of the Interpretation Acts 1948 and 1967 ('the Act') (see p 197E–H).

(2) Section 105(b) of the Act stipulated that 'if the last day of the period is a weekly holiday or a public holiday (excluded days), the

period shall include the next following day not being an excluded day'. In the instant case, the last day of the period of six months, that is, 27 January 1990 was an excluded day and the next following day that was not an excluded day was 30 January 1990. As such, the last day of the period was 30 January 1990 and the six-month period lapsed only on 31 January 1990. Hence, the registration of the transfer on 30 January 1990 was prohibited by s 336(1)(a) of the NLC (see pp 197I–198B).

(3) Nevertheless, for an instrument to be regarded as an insufficient or void instrument, there must be something about the instrument itself that rendered the instrument insufficient or void. In the instant case, there was no evidence in this regard in respect of the instrument of transfer. The fact that the registration of the instrument was prohibited by reason of the existence of the prohibitory order could not affect the character of the instrument so as to render it an insufficient or void instrument. The prohibitory order was extraneous to the instrument and had nothing to do with the character of the instrument (see p 198E–G).

[Bahasa Malaysia summary

Plaintif telah mendapatkan penghakiman terhadap defendan-defendan pertama dan kedua untuk sejumlah wang. Bagi tujuan menyempurnakan penghakiman tersebut melalui sita dan jualan sebidang tanah milik defendan-defendan pertama dan kedua, plaintif telah mendapatkan satu perintah larangan di bawah A 30 k 13(1) Kaedah-Kaedah Mahkamah Rendah 1980. Perintah larangan tersebut dibuat pada 28 Julai 1989 dan menurut perintah tersebut, defendan-defendan pertama dan kedua dilarang daripada melakukan apa-apa urusan berhubung tanah tersebut. Di bawah s 338(1) Kanun Tanah Negara 1965 ('KTN'), perintah larangan tersebut akan luput apabila tamat tempoh enam bulan bermula daripada 28 Julai 1989. Pada 30 Januari 1990 terdapat suatu pendaftaran, pada daftar dokumen hakmilik tanah tersebut, bagi suratcara pindahmilik di mana defendan-defendan pertama dan kedua telah memindah-milikkan tanah tersebut kepada defendan ketiga. Ini adalah permohonan oleh plaintif untuk deklarasi bahawa pindahmilik tanah tersebut oleh defendan-defendan pertama dan kedua kepada defendan ketiga adalah tak sah di bawah s 336 KTN dan untuk perintah selanjutnya bahawa semua memorial pindahmilik tersebut dibatalkan oleh pentadbir tanah. Menurut plaintif, 27 Januari 1999 adalah hari terakhir berkuatkuasa perintah larangan tersebut tetapi hari tersebut adalah hari cuti awam, iaitu hari pertama Tahun Baru Cina. 28 Januari 1990 adalah hari Ahad dan 29 Januari 1990 adalah hari cuti awam, iaitu hari cuti ganti bagi hari kedua Tahun Baru Cina, yang jatuh pada hari Ahad 28 Januari 1990. Maka, plaintif mengatakan bahawa hari terakhir tempoh enam bulan tersebut adalah pada

A 30 Januari 1990 dan perintah larangan tersebut, oleh itu, luput hanya pada 31 Januari 1990.

Diputuskan, menolak permohonan plaintif:

B (1) Menurut s 338(1) KTN, satu perintah larangan hendaklah 'lapse at the expiry of six months from the date on which it was made'. Tempoh enam bulan tersebut akan luput setelah hari terakhir berlalu, iaitu, pada hari selepas hari terakhir tersebut. Oleh itu, persoalan yang perlu ditentukan adalah apakah hari terakhir untuk tempoh enam bulan di dalam kes ini. Penafsiran statut yang C diterapkan kepada KTN adalah s 36(b) Ordinan Tafsiran dan Klausa-Klausa Am 1948, sekarang s 105(b) Akta Tafsiran 1948 dan 1967 ('Akta tersebut') (lihat ms 197E–H).

(2) Seksyen 105(b) Akta tersebut memperuntukkan bahawa 'if the last day of the period is a weekly holiday or a public holiday D (excluded days), the period shall include the next following day not being an excluded day'. Dalam kes ini, hari terakhir untuk tempoh enam bulan iaitu, 27 Januari 1990 adalah satu hari pengecualian dan hari berikutnya yang bukan satu hari pengecualian adalah 30 Januari 1990. Oleh itu, hari terakhir untuk tempoh tersebut adalah 30 Januari 1990 dan tempoh enam E bulan tersebut luput hanya pada 31 Januari 1990. Justeru itu, pendaftaran pemindahan pada 30 Januari 1990 adalah dilarang oleh s 336(1)(a) KTN (lihat ms 197I–198B).

(3) Namun begitu, untuk suratcara tersebut dianggap sebagai satu suratcara yang tidak memadai atau terbatal, perlu ada sesuatu F tentang suratcara tersebut yang menyebabkan suratcara tersebut tidak memadai atau terbatal. Dalam kes ini, tiada keterangan dalam keadaan ini berhubung suratcara pindahmilik tersebut. Hakikat bahawa pendaftaran suratcara tersebut dilarang oleh sebab kewujudan perintah larangan tersebut tidak memberi kesan ke atas sifat suratcara tersebut sehingga menyebabkannya menjadi G satu suratcara yang tidak memadai atau terbatal. Perintah larangan tersebut adalah di luar suratcara tersebut dan tidak mempunyai apa-apa kaitan dengan sifat suratcara tersebut (lihat ms 198E–G).]

H **Notes**

For cases on prohibitory order, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3320–3325.

I **Cases referred to**

United Malayan Banking Corp Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2) [1988] 3 MLJ 352 (refd)

Legislation referred to

Interpretation Acts 1948 and 1967 ss 54(1)(b), 105(a), (b)
Interpretation and General Clauses Ordinance 1948 s 36(b)
National Land Code 1965 ss 336, (1)(a), (4), 338(1), 340(1), (2)
Subordinate Courts Rules 1980 O 30 rr 2, 13(1), (5)

Chen Cheong Heng (*Concisom & Co*) for the plaintiff.
Chan Kai Wooi (*Chai & Partners*) for the third defendants.

Abdul Aziz J: By this originating summons, the plaintiff seeks a declaration that the transfer of a certain land in Mukim Bidor by the first and second defendants to the third defendant company is void under s 336 of the National Land Code ('the Code') and a consequential order that the land administrator cancel all memorials of the transfer. The originating summons is resisted by the third defendants only. The first and second defendants, although served, did not appear at the hearing.

The plaintiff had obtained judgment against the first and second defendants for RM26,000, besides interest and costs. In order to execute the judgment by seizure and sale of the land, the plaintiff obtained a prohibitory order under O 30 r 13(1) of the Subordinate Courts Rules 1980 ('the SCR'). The prohibitory order was made on 28 July 1989. It, in effect, prohibited the first and second defendants from effecting any dealing with the land. I should mention in passing that it also affected another land of the first and second defendants, but the other land is not concerned in this case. The prohibitory order was to lapse, as provided by s 338(1) of the Code, at the expiry of six months from 28 July 1989, the date on which it was made. It was entered on the register document of title to the land on 9 August 1989, with the effect, according to s 336(1)(a) of the Code, of prohibiting as long as it continued in force the registration, endorsement or entry on the register document of title of any instrument of dealing executed by the first and second defendants. According to s 336(4), where the registration of any instrument of dealing is prohibited by a prohibitory order, the registrar shall reject the instrument.

According to the third defendants' counsel, the prohibitory order lapsed on 27 January 1990. According to the plaintiff, 27 January 1990 was the last day on which the prohibitory order was in force or, in other words, that it was the last day of the period of six months. But that was a public holiday, being the first day of Chinese New Year. 28 January 1990 was a weekly holiday, being a Sunday, 29 January 1990 was a public holiday, being a substitute holiday for the second day of Chinese New Year which fell on Sunday. So the plaintiff maintains that the last day of the period of six months was 30 January 1990 and the prohibitory order, therefore, lapsed only on 31 January 1990.

Although the third defendants' counsel submitted that the period of six months lapsed on 27 January 1990, I think he meant that that date was the last day of the period of six months because he could not have regarded 26 January 1990 as the last day of the period of six months from 28 July

A 1989. So I take it as common ground that the last day of the period of six months was 27 January 1990.

On 30 January 1990, there was registered on the register document of title to the land an instrument of transfer by which the first and second defendants transferred the land to the third defendant company. If the B plaintiff is right that on that day the prohibitory order was still in force, then the registration of the transfer was prohibited and the registrar should have rejected the instrument of transfer. That is the ground of the plaintiff's application.

According to the plaintiff's counsel — and it was conceded by the third C defendants' counsel — an application for extension of the prohibitory order was made before it lapsed on 31 January 1990, but the order of extension was obtained only after 31 January 1990. Since, however, the order of extension could not therefore have been presented for registration before the prohibitory order lapsed on 31 January 1990, as required by s 338(2), then according to that section, the extension order did not have effect. If, D therefore, the plaintiff is right that the prohibitory order lapsed on 31 January 1990, then had the instrument of transfer been presented and registered just one day later than it actually was, that is on 31 January 1990 instead of on 30 January 1990, the plaintiff would have no ground to challenge the registration of the transfer.

E The life of a prohibitory order is prescribed both by s 338(1) of the Code and by O 30 r 13(5) of the SCR. Although substantially having the same effect, those two provisions are differently worded. Since the Code is a principal legislation, it is the governing legislation, and one must look to the wording of s 338(1). According to that section, a prohibitory order shall 'lapse at the expiry of six months from the date on which it was made'. It is F a question of determining a period, which is six months, from the happening of an event, which in this case is the date of the making of the prohibitory order, 28 July 1989. The period will expire only when it has passed. The period will pass only with the passing of the last day of the period. The period lapses upon the passing of the last day, that is on the day after the last day. So the question that needs to be determined is what was the last G day of the period of six months in this case. And I think that to determine that, resort must be had to the interpretation statute, not O 3 r 2 of the SCR, to which the third defendants' counsel turned, because O 3 r 2 applies to the interpretation of the Rules, whereas here we are concerned with the interpretation of a provision in the Code. The interpretation statute applicable to the Code is the Interpretation and General Clauses Ordinance H 1948, and the section is s 36(b), now s 105(b) of the Interpretation Acts 1948 and 1967 (Act 388), which is a revised or revising Act. It does not matter, though, if the Interpretation Act 1967 were resorted to because the provision then would be s 54(1)(b), now also s 54(1)(b) of Act 388, which is to the same effect as s 36(b) of the 1948 Act, now s 105(b) of Act 388.

I Section 105(b), construed in the light of s 105(a), is for determining a period of days from the happening of an event or the doing of any act or thing, and says as follows:

> If the last day of the period is a weekly holiday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day not being an excluded day.

Since in this case the last day of the period of six months, 27 January 1990, was an excluded day and the next following day that was not an excluded day was 30 January 1990, the last day of the period was 30 January 1990, and the period lapsed only on 31 January 1990. The plaintiff is therefore right that the registration of the transfer on 30 January 1990 was prohibited by s 336(1)(a).

But to the third defendants' counsel, it does not follow that if a dealing is registered, while the registration is prohibited by s 336(1)(a) the registration may be cancelled. He submitted that the third defendants, having been registered as the proprietor of the land, by virtue of s 340(1), their title is indefeasible.

Learned counsel for the plaintiff did not attempt to argue that the need to cancel the registration of a prohibited dealing overrides the indefeasibility of title conferred by s 340(1). What he did was to resort to s 340(2) and to submit that the third defendants' title was not indefeasible by virtue of para (b) thereof because the registration 'was obtained ... by means of an insufficient or void instrument'. He relied on *United Malayan Banking Corp Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2)* [1988] 3 MLJ 352, to argue that because the prohibitory order in this case prohibited the registration of the transfer and obliged the registrar to reject the instrument of transfer, the instrument was an insufficient or void instrument.

In my opinion, for an instrument to be regarded as an insufficient or void instrument, there must be something about the instrument itself that renders it insufficient or void. There is no evidence as to that as regards the instrument of transfer in this case. As I said, had the instrument been presented and registered a day later, the plaintiff would have no ground to find fault with the registration. The fact that the registration of the instrument was prohibited by reason of the existence of the prohibitory order cannot, in my opinion, affect the character of the instrument so as to render it an insufficient or void instrument. The prohibitory order is extraneous to the instrument and has nothing to do with the character of the instrument.

As there is no effective answer to the argument as to indefeasibility of title and as the real aim of the plaintiff's application is to expunge the third defendants' title, I dismiss the application with costs.

Plaintiff's application dismissed.

Reported by Lim Lee Na